FILED
SEP 26 2007

No. 07-395
(Application No. 07A252)
CAPITAL CASE

In the
SUPREME COURT OF THE UNITED STATES

THOMAS D. ARTHUR,

Petitioner,

v.

RICHARD F. ALLEN, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

RESPONDENTS' REPLY TO PETITIONER'S SECOND SUPPLEMENTAL BRIEF

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RESPONDENT'S REPLY TO PETITIONER'S SECOND SUPPLEMENTAL BRIEF

(Capital Case)
(Execution Scheduled for September 27, 2007 at 6:00 p.m. CDT)

Thomas Arthur filed a second supplemental brief earlier today in further support of his petition for certiorari and request for a stay. The brief is based on telephone conversations Arthur's counsel had with Scott Rouse, deputy legal advisor to the Governor of Alabama, and with Anne Adams, Executive Assistant to the Commissioner of the Alabama Department of Corrections. The respondent offers this brief reply.

Anne Adams has prepared an affidavit, that is attached as Exhibit A, to correct some of the misinformation contained in Arthur's second supplemental brief. First, Ms. Adams did tell Arthur's counsel that the Alabama Department of Corrections is making a minor modification to its execution protocol. Ms. Adams testifies as follows:

> I then went on to tell Ms. Han that in another legal matter the Department of Corrections has committed to adding an additional safeguard to our protocol. The additional safeguard will be that after the administration of the first drug in the current protocol, sodium pentathol, someone will be tasked with assessing the consciousness of the condemned.

Exhibit at ¶ 3. Contrary to Arthur's brief to this Court, Ms. Adams did not tell Arthur's counsel that Alabama's present execution procedures are unconstitutional. Id.

Arthur's counsel was informed of this minor modification because it was the Department of Corrections' ethical obligation to inform her of the change

that is to be made in the future. Id. ¶ 4. Arthur's counsel was also informed that "logistically it would be impossible for us to implement this change by tomorrow [Arthur's scheduled execution date]. Id. at ¶ 6.

Ms. Adams disputes that she "confirmed" information provided by the Governor's deputy legal advisor to Arthur's counsel because Ms. Adams is unaware of the subject matter of their call. Id. at ¶ 10. Ms. Adams states further that "[d]espite Ms. Han's contention to the contrary, the Department of Corrections is NOT adding this additional safeguard to its protocol 'in an attempt to comply with the minimum standards set forth in the Eighth Amendment to the United States Constitution.'" Id. at ¶ 11 (quoting Arthur's second supplemental brief at p. 1). Finally, Ms. Adams told Arthur's counsel that:

> ...the Warden at all times during the execution is assessing consciousness, to the extent he is watching the inmate, looking for any indication the inmate may be conscious. The additional safeguard we plan to add will simply take that assessment one step further by having someone in the chamber with the condemned to assess consciousness.

Id. at 11.

For the foregoing reasons, and those stated in the State's previous filings, the respondent requests that this Court deny Arthur's petition for certiorari and stay application.

Respectfully submitted,

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AFFIDAVIT OF ANNE C. ADAMS

I, Anne C. Adams, do solemnly swear to the following facts:

1. I am an Assistant Attorney General presently employed with the Alabama Department of Corrections as Special Counsel to the Commissioner. I have been employed in that capacity since March, 2006. Before I was appointed Special Counsel to the Commissioner, I served as an Assistant Attorney General in the Alabama Attorney General's Office.

2. This morning I spoke with Suhana Han, counsel for Arthur. I began our conversation by stating that the Department of Corrections stands behind its current execution protocol and is confident that, as it is currently written, the protocol is constitutional. At no time did I concede "that such protocol violates the United States Constitution," as Ms. Han suggests on page 3 of Arthur's most recent filing. In fact, I deliberately began our conversation with my strong statement to the contrary.

3. I then went on to tell Ms. Han that in another legal matter the Department of Corrections has committed to adding an additional safeguard to our protocol. The additional safeguard will be that after the administration of the first drug in the current protocol, sodium pentathol, someone will be tasked with assessing the consciousness of the condemned.

4. I further indicated that there may or may not be additional safeguards added but that the only reason I called her was to tell her that the Department is committed to adding the additional step to assess consciousness and felt we had an ethical obligation to inform her as such.

5. Ms. Han asked me if the other matter I was referring to was the McNair case and if attorneys from the Office of the Attorney General were involved. I responded that while the McNair case is currently in litigation, the addition of the step to assess consciousness was made by this Department. I further reminded her that the purpose of my call was solely to notify her, as a representative of the Department of Corrections, of the Department's decision to add this additional safeguard to its protocol and that I did not call to discuss, nor was I authorized to discuss, ANY litigation matters - reminding her the litigation in all of these cases is being handled by the Office of the Attorney General.

6. Ms. Han then further stated that she assumed we were not going to make this change to our protocol for Mr. Arthur. My response was simply that logistically it would be impossible for us to implement this change by tomorrow.

7. Ms. Han then went on to say that she assumed Arthur was not going to get a stay. Again, I told her I had no way of knowing that and could not discuss litigation matters with her. Again, stating the limited purpose for my call.

8. Ms. Han further asked me if the Department intended to issue a press release regarding the addition of the safeguard to assess consciousness and I told her that, to my knowledge, the answer was no.

9. I concluded my call with Ms. Han by restating the limited purpose of my call -notification of the Department's intent to add an additional safeguard to assess consciousness.

10. While it is clear from Arthur's most recent filing that Ms. Han had spoken to Scott Rouse, Deputy Legal Advisor to the Governor, before speaking with me, she never told me they had spoken much less what they discussed. Yet on page 2 of Arthur's most recent filing, Ms. Han states that I "confirmed the information provided by Mr. Rouse." Not only is that untrue as a matter of fact, there are details she includes in her recounting of her conversation with Mr. Rouse that I never discussed with her - for example a list of prospects for conducting the assessment of consciousness - and, in one instance, specifically stated I would not discuss - other matters currently in litigation.

11. Despite Ms. Han's contention to the contrary, the Department of Corrections is NOT adding this additional safeguard to its protocol "in an attempt to comply with the minimum standards set forth in the Eighth Amendment to the United States Constitution." (Arthur's filing, page 1) This Department is confident that its current protocol is constitutional and I never said anything to suggest to the contrary. I would further note that, as part of the current protocol, the Warden at all times during the execution is assessing consciousness, to the extent he is watching the inmate, looking for any indication the inmate may be conscious. The additional safeguard we plan to add will simply take that assessment one step further by having someone in the chamber with the condemned to assess consciousness.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this 26th day of September, 2007.

s/ Anne C. Adams

Sworn to and subscribed before me, the undersigned notary public, on this the 26th day of September, 2007, in Montgomery County, Alabama.

s/ Kay P. Hope

My commission expires : 3/31/08